

Mail Stop Interference
P.O. Box 1450
Alexandria, VA 22313-1450
Tel: 571-272-4683
Fax: 571-273-0042

Paper 1
Filed: 19 August 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

SHLOMO BEN-HAIM, NISSIM DARVISH,
YUVAL MIKA and MAIER FENSTER
Junior Party
(Patent 6,463,324),

v.

MORTON M. MOWER
Senior Party
(Application 10/053,750).

Patent Interference No. 105,768 (SCM)
(Technology Center 3700)

DECLARATION – Bd.R. 203(b)¹

1 **Part A. Declaration of interference**

2 An interference is declared (35 U.S.C. § 135(a)) between the above-
3 identified parties. Details of the application(s), patent (if any), reissue

¹ “Bd.R. x” may be used as shorthand for “37 C.F.R. § 41.x”. 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

1 application (if any), count(s) and claims designated as corresponding or as not
2 corresponding to the count(s) appear in Parts E and F of this DECLARATION.

3 **Part B. Judge managing the interference**

4 Administrative Patent Judge Sally C. Medley has been designated to
5 manage the interference. Bd.R. 104(a).

6 **Part C. Standing order**

7 A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this
8 DECLARATION. The STANDING ORDER applies to this interference.

9 **Part D. Initial conference call**

10 A telephone conference call to discuss the interference is set for **1:30 p.m.**
11 **on 12 Oct. 2010** (the Board will initiate the call).

12 No later than **four business days** prior to the conference call, each party
13 shall file and serve (SO ¶¶ 10.1 & 105) a list of the motions (Bd.R. 120;
14 Bd.R. 204; SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

15 A sample schedule for taking action during the motion phase appears as
16 Form 2 in the STANDING ORDER. Counsel are encouraged to discuss the
17 schedule prior to the conference call and to agree on dates for taking action. A
18 typical motion period lasts approximately eight (8) months. Counsel should be
19 prepared to justify any request for a shorter or longer period.

Part E. Identification and order of the parties

Junior Party

Named Inventors: SHLOMO BEN-HAIM, Haifa, Israel
NISSIM DARVISH, Haifa, Israel
YUVAL MIKA, Haifa, Israel
MAIER FENSTER, Petachtikva, Israel

Involved Patent: Patent 6,463,324, issued 08 Oct. 2002, based on
Application 09/254,900, filed 12 March 1999
and Re-examined per application 90/008312,
filed 1 November 2006, certificate issued 29
April 2008.

Title: CARDIAC OUTPUT
ENHANCED PACEMAKER

Assignee: MEDINVEST CAPITAL S.A.R.L.

Senior Party

Named Inventors: MORTON M. MOWER, Baltimore, MD

Involved Application: Application 10/053,750, filed 21 Jan. 2002.

Title: AUGMENTATION OF ELECTRICAL
CONDUCTION AND CONTRACTILITY
BY BIPHASIC CARDIAC PACING
ADMINISTERED VIA THE CARDIAC
BLOOD POOL

Assignee: MR3 MEDICAL, LLC

The senior party is assigned exhibit numbers 1001-1999. The junior party
is assigned exhibit numbers 2001-2999. Bd.R. 154(c)(1); SO ¶ 154.2.1. The
senior party is responsible for initiating settlement discussions. SO ¶ 126.1.

1 **Part F. Count and claims of the parties**

2 Count 1

3 Claim 9 of Ben-Haim's Patent 6,463,324

4

5 The claims of the parties are:

6 Ben-Haim: 1-41²

7 Mower: 12-14, 18-20, 22, 58-66

8 The claims of the parties which correspond to Count 1 are:

9 Ben-Haim: 2-5, 8-10, 12-15, 19, 21, 23, 25, 27-29, 31, 33,
10 35, 37-41

11 Mower: 58-66

12 The claims of the parties which do not correspond to Count 1 are:

13 Ben-Haim: 1, 6-7, 11, 16-18, 20, 22, 24, 26, 30, 32, 34, 36

14 Mower: 12-14, 18-20, 22

15

16 The parties are accorded the following benefit for Counts 1-3:

17 Ben-Haim: International App. PCT/IL97/00236,
18 filed 09 July 1997, now WO98/10832,
19 published 19 March 1998.

20 Provisional App. 60/026,392, filed 16 Sep.
21 1996.

22 Mower: App. 09/690,947, filed 18 Oct. 2000, now
23 Patent 6,341,235, issued 22 Jan. 2002.

24 App. 09/008,636, filed 16 Jan. 1998, now
25 Patent 6,136,019, issued 24 Oct. 2000.

26

² As issued in the reexamination certificate.

1 App. 08/699,552, filed 19 Aug. 1996, now
2 Patent 5,871,506, issued 16 Feb. 1999.
3
4

5 **Part G. Heading to be used on papers**

6 The following heading must be used on all papers filed in this
7 interference, see SO ¶ 106.1.1:

8 UNITED STATES PATENT AND TRADEMARK OFFICE
9

10 BEFORE THE BOARD OF PATENT APPEALS
11 AND INTERFERENCES
12

13 SHLOMO BEN-HAIM, NISSIM DARVISH,
14 YUVAL MIKA and MAIER FENSTER
15 Junior Party
16 (Patent 6,463,324),

17 v.

18 MORTON M. MOWER
19 Senior Party
20 (Application 10/053,750).
21

22 Patent Interference No. 105,768 (SCM)
23 (Technology Center 3700)
24

1 cc (via overnight delivery):

2 Attorney for Ben-Haim:

3 Cozen O'Connor
4 277 PARK AVENUE
5 20th FLOOR
6 NEW YORK, NY 10172

7 William H. Dippert
8 ECKERT SEAMANS CHERIN & MELLOTT, LLC
9 U.S. STEEL TOWER
10 600 GRANT STREET, 44th FLOOR
11 PITTSBURGH, PA 15219

12

13 Attorney for Mower:

14 The Marbury Law Group, PLLC
15 11800 SUNRISE VALLEY DRIVE
16 SUITE 1000
17 RESTON, VA 20191